

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 02, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GRAHAM SHERRILL,

Plaintiff,

v.

SUPERINTENDENT JAMES KEY,
ASSISTANT SUPERINTENDENT
RIVERA, CPM DEUNICH and
SENA BLANCHER,

Defendants.

NO: 2:22-CV-00132-RMP

ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE

By Order filed June 28, 2022, the Court directed Plaintiff Graham Sherrill, a *pro se* prisoner at the Airway Heights Corrections Center, to show cause why the Court should grant his application to proceed *in forma pauperis*. ECF No. 6. In the alternative, Plaintiff could have paid the \$402.00 filing fee. *Id.*

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DISMISSING CASE -- 1

1 On July 12, 2022, Plaintiff filed a document titled “motion to show cause...”
2 which the Court liberally construes as his Response to the Order to Show Cause.
3 ECF No. 7. After careful review of Plaintiff’s submission, the Court finds that
4 Plaintiff has failed to demonstrate that he was under imminent danger of serious
5 physical injury when he initiated this case and is thus precluded under 28 U.S.C. §
6 1915(g) from proceeding in this action without prepayment of the filing fee. *See*
7 *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).

8 Plaintiff attempts to refute the Court’s finding that he filed three or more
9 actions that were dismissed as frivolous, malicious, or for failure to state a claim
10 upon which relief may be granted, *see* ECF No. 6 at 2–3, claiming that he was
11 subject to quarantine between November 2021 and January 2022. ECF No. 7 at 2.
12 However, only one of four relevant dismissals occurred during that timeframe. *See*
13 *Sherrill v. Watkins et al*, No. 2:21-cv-00201-RMP (E.D. Wash. Nov. 19, 2021)
14 (dismissed with prejudice for failure to state a claim upon which relief may be
15 granted under 28 U.S.C. § 1915(e)(2)). Because the appeal of that case also was
16 dismissed as frivolous, *see Sherrill v. Watkins et al.*, No. 21-35991 (9th Cir. June
17 17, 2022), the Court cannot infer that the dismissal was excusable by this
18 quarantine.

19 Having reviewed Plaintiff’s submission, the Court finds that he has failed to
20 demonstrate that his eligible to proceed *in forma pauperis* under 28 U.S.C. §
21 1915(g), or that he was under imminent danger of serious physical injury when he

1 filed his complaint. *See Andrews v. Cervantes*, 493 F.3d 1047, 1055–56 (9th Cir.
2 2007). Therefore, Plaintiff has lost the privilege of filing this lawsuit *in forma*
3 *pauperis*. Because Plaintiff did not avail himself of the opportunity to pay the
4 \$402.00 filing fee, he may not proceed with this action.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Plaintiff's application to proceed *in forma pauperis*, **ECF No. 4**, is
7 **DENIED.**

8 2. This action is **DISMISSED WITHOUT PREJUDICE** for non-
9 payment of the filing fee as required by 28 U.S.C. § 1914.

10 3. The District Court Clerk shall **CLOSE** the file.

11 4. The Court certifies any appeal of this dismissal would not be taken in
12 good faith.

13 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
14 Order, enter judgment, and provide copies to Plaintiff.

15 **DATED** August 2, 2022.

16
17 s/ Rosanna Malouf Peterson
18 ROSANNA MALOUF PETERSON
19 Senior United States District Judge
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